APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 06-3253

File Name: 07a0332n.06
[Filed: May 11, 2007]

NOT RECOMMENDED FOR
FULL-TEXT PUBLICATION

KENNETH TALMON,	)
Plaintiff-Appellant,	)
	)
v.	)
	)
CENTRAL STATES, SOUTHEAST & SOUTHWEST AREAS PENSION FUND,	)
Defendant-Appellee.	)
	)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

BEFORE: MARTIN and DAUGHTREY, Circuit Judges; SCHWARZER, District Judge.*

PER CURIAM. Kenneth Talmon appeals the district court's judgment dismissing his claim against Central States Southeast and Southwest Areas Pension Funds (Central States) for a Partial Pension. Talmon's complaint alleged breach of fiduciary duty and denial of benefits under section 502 of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132.[1] He contended that Central States had incorrectly calculated the number of years of qualifying service to which he was entitled. Central States moved to dismiss the breach of fiduciary duty claim and for judgment on the administrative record on the benefits claim. The district court, in a well-reasoned opinion, granted both motions, holding that (1) ERISA bars fiduciary duty claims on behalf of a participant suing for individual benefits, and (2) on the administrative record, Central States' denial of benefits was not arbitrary and capricious. We adopt the district court's opinion and affirm.

In his appeal Talmon does not challenge the dismissal of his fiduciary breach claim. His principal argument in this court is that the district court used the wrong standard in deciding the motion for judgment on the administrative record and should have reviewed the trustees' decision to deny

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* The Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

[1] Talmon also alleged a breach of the collective bargaining agreement by a second defendant, International Brotherhood of Teamsters Truck Drivers Union Local 407, but later voluntarily dismissed that claim.

benefits de novo rather than under the "arbitrary and capricious" standard. As the district court correctly observed, the appropriate standard of review in ERISA cases depends on the terms of the plan in question. "[U]nless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan," the decision of the administrator is reviewed de novo. *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). "If the plan gives such discretionary authority, [the court] reviews the administrator's decision to deny benefits using the highly deferential arbitrary and capricious standard of review." *Darland v. Fortis Benefits Ins. Co.*, 317 F.3d 516, 527 (6th Cir. 2003) (internal quotation omitted). Both parties agree that the district court may only consider the evidence that was before the plan administrator at the time of the original decision. *See, e.g.*, *Perry v. Simplicity Eng.*, 900 F.2d 963, 967 (6th Cir. 1990) ("The de novo standard of review, like the . . . arbitrary and capricious standard, does not mandate or permit the consideration of evidence not presented to the administrator.").

Talmon offers no legal or factual support for his contention that the district court or this court should review the administrator's decision de novo. His only argument as to *why* that standard should be used is that applying the arbitrary and capricious standard "results in [an] unjust and inequitable decision." Under the terms of Central States' Trust Agreement, "[t]he Trustees are vested with discretionary and final authority in making all such decisions, including Trustee decisions upon claims for benefits by . . . claimants, and including Trustee decisions construing plan documents of the Pension Fund." The district court therefore correctly applied the arbitrary and capricious standard.

"Under [the] deferential 'arbitrary and capricious' standard, [the court] will uphold a benefit determination if it is rational in light of the plan's provisions." *Darland v. Fortis Benefits Ins. Co.*, 317 F.3d 516, 527 (6th Cir. 2003) (internal quotation omitted). "[W]hen it is possible to offer a reasoned explanation, based on the evidence, for a particular outcome, that outcome is not arbitrary or capricious." *Id.* (internal quotation omitted).

In support of his claim for a Partial Pension, Talmon contended that Local 293 incorrectly recorded his credit for 1967 to 1969 and charged him with a break in service in 1968, and that he was entitled to work for Illinois California Express (ICX) (and therefore earn credit) from 1980 to 1985. Based on the undisputed fact that Talmon left covered service no later than 1985, the Central States Trustees concluded that even if he had established full years of contributions from 1980 through July 1984 (when ICX went bankrupt) and full years of credit under Local 293's Pension Fund from 1967 to1969, he still would not have established the thirty years of Combined Credited Service (required when a participant leaves covered employment before age fifty) to qualify for a Partial Pension.

The Trustees' determination that Talmon was ineligible for a Partial Pension was rational and supported by the evidence. Even if Talmon were awarded credit for all the years in dispute, he would still fall far short of the requisite thirty years of credited service for a Partial Pension.

The district court ably summarized the relevant evidence and correctly identified the applicable law. Given that treatment of the plaintiff's claims, the issuance of a full written opinion by this court would be duplicative and serve no precedential purpose. We therefore AFFIRM the judgment

of the district court on the reasoning set forth in that court's opinion and order filed January 6, 2006.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No.: 1:05 CV 1330

[Filed January 6, 2006]

KENNETH TALMON,
Plaintiff,

v.

CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, *et al.*,
Defendants

JUDGE SOLOMON OLIVER, JR.

ORDER

On May 16, 2005, Plaintiff Kenneth Talmon ("Plaintiff" or "Talmon") filed the instant action against Defendants Central States Southeast and Southwest Areas Pension Fund ("Defendant" or "Central States") and Local 407 International Brotherhood of Teamsters Truck Drivers Union ("Local 407"), alleging (1) breach of fiduciary duty under ERISA;(2) lack of compliance with benefit plans under ERISA; and (3)

breach of collective bargaining agreement ("CBA"). On June 10, 2005, Plaintiff voluntarily dismissed all claims against Local 407, with prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(ii). The dismissal left claims one and two pending against Central States only.

On July 1, 2005, Central States filed a Motion to Dismiss with respect to the first claim. (ECF No. 7). Talmon has yet to respond to the Motion to Dismiss. On August 2, 2005, Central States filed a Motion for Judgment on the Administrative Record with respect to all claims. (ECF No. 9). Talmon has filed a brief in opposition, and Central States filed a reply brief. For the reasons that follow, both of Defendant's motions are granted.

I. FACTS

Talmon, a former truck driver, contends he is entitled to a Partial Pension of $2,500 per month from Central States, and that the Central States Pension Fund Trustees improperly rejected his pension claim. Central States is a multi-employer pension plan with 185,000 active participants, 180,000 retirees, and 16,000 survivors of retirees in over 30 states. (Nelson Aff. ¶¶ 13-14, ECF No. 9, Att. 2.)

A. Talmon's Work History and Pension Contributions

From August 3, 1963 to February 29, 1968, Talmon worked and accrued 4.33 years of credited service in a non-Central States pension fund, the Local Union 293 Pension Fund. (Mar. 23, 2005 Trustees Rep. 1, ECF No. 11, Ex. C.)

Talmon's employment history between February 29, 1968, and September, 1969, is not clear from the record. Talmon contends he was continuously employed during this

time period for a variety of employers, and belonged to both Local Union 293 and Local 407 as a member of the Central States Pension Fund. (*See* Criss Aff., ECF No. 13, Exh. A; Burdell Aff., ECF No. 13, Exh. E.)

It is undisputed that from September, 1969, until he was laid off in July, 1980, Talmon worked for Southern Express, and then ICX, as a member of Local 407. Southern Express and ICX were participants in Central States. (*Id.*) During this time period, Talmon accrued 10.75 years of service credit. (*Id.*) When ICX closed its Ohio operations in July, 1980, Talmon was 44 years old.

Talmon argues that when ICX closed its Ohio operations, the CBA required ICF to transfer him to a job in another ICX facility. Since ICX did not do so, Talmon asserts his pension should be credited for the additional 4.5 years between his 1980 layoff and ICX's 1985 bankruptcy. Talmon filed an unsuccessful grievance to this effect in 1984. (*Id.* at 2.)

There is no dispute about any period of time before 1963 or after 1985.

B. The Central States Pension Fund ("Fund")

The Central States Pension Fund Trust Agreement grants the Fund's trustees discretionary authority to construe plan documents, make decisions upon claims for benefits, and adopt rules and regulations for administering the Fund. (Trust Agreement 9, 12, 16-17, ECF No. 12, Exh. A.; Nelson Aff. ¶ 20, ECF No. 9, Att. 2.)

The Central States Pension Fund Plan Document ("Plan Document") describes the various types of pensions which may be earned by participants. Under the terms of the Plan

Document, a participant who attains his 57th birthday and has twenty years of credited service may obtain a Twenty-Year Service Pension. (Plan Document § 4.02, ECF No. 12, Exh. B.) A participant may obtain an Early Retirement Pension if they are under age 50 and have completed thirty years of credited service. (*Id.* at § 4.03.)

For participants who do not qualify for the above pensions because their credited service is divided between employers maintaining different pension plans, a Partial Pension is available. (*Id.* at § 5.01) However, Partial Pensions are only available if the participant would be eligible for a Twenty-Year Service Pension or Early Retirement Pension using combined credited service. (*Id.*)

If a plan participant has a One Year Break in Service, he ceases to be a participant, and any non-vested credited service is excluded. (*Id.* at § 3.05(e).) The Plan Document also discusses a "One Year Break in Service," defining it as any calendar year in which a participant receives less than ten vesting service weeks. (*Id.* at § 3.05(c).)

C. Administrative History

The history of pension claim disputes between the parties has been drawn out for more than twenty years.

On July 10, 1981, Talmon first asked Central States how many years of credited service he had accumulated towards his pension benefit. On July 21, 1981, it informed Talmon that he had accumulated 10.75 years of credited service. There is no evidence that Talmon disputed this calculation.

On July 9, 1993, Talmon again inquired about the status of his Central States pension. In an August 4, 1993 letter,

Central States reiterated its calculation of 10.75 years of credited service, and informed Talmon that since he left covered employment before reaching age 50, he needed 30 years of combined service credit to qualify for a Partial Pension.

On September 24, 1993, Talmon applied for a Partial Pension. On October 26, 1993, Central States sent a letter to Local Union 293 inquiring into how much credited service Talmon had compiled between 1962 and 1969. On March 14, 1994, before hearing back from Local Union 293, Central States rejected Talmon's application for a partial pension. Central States noted that even if Talmon was credited for his service with Local Union 293 between 1962 and 1969, his credited service would not add up to the 30 years he needed because he left covered service well before age 50. However, Central States did indicate that Talmon was eligible for a Vested Pension, which would provide him a substantially lower monthly payment than a Partial Pension.

Central States eventually heard from Local Union 293 on April 12, 1994. Local Union 293 indicated that Talmon sustained a break-in-service in December 1968, and the break-in-service caused him to forfeit his credited service under the terms the Local Union 293 pension plan.

Talmon continued to contact Central States between 1994 and 2002 regarding his pension benefits. At some point in late 2001, or early 2002, Talmon retained counsel to assist him in pursuing his pension benefits. On September 27, 2002, Talmon formally appealed Central States' decisions on his pension, arguing that he was entitled to credited service between his layoff in 1980 and ICX's bankruptcy in 1985, as well as additional credited service between 1967 and 1969.

On January 3, 2003, the Central States Benefits Claim Appeals Committee rejected the appeal, finding that:

> Even if Mr. Talmon had established full years of Contributions from 1980 through July 1984 (when ICX went bankrupt) under Central States Pension Fund and full years of credit with the Local Union 293 Pension Fund from 1967-1969, he still would not have established 30 years of Combined Credited Service (needed when a Participant leaves Covered Employment before age 50) to qualify for a Partial Pension.

(Jan. 3, 2003 Decision, ECF No. 12, Exh. C at 187.)

On February 1, 2003, Talmon appealed the decision to the Central States Board of Trustees. Before reaching its decision, Central States received a letter from Local 407 addressing some of the issues raised in the appeal. Local 407 stated that the only time period for which it contributed to the Central States Pension Fund on Talmon's behalf was between 1969 and 1980. The union also detailed some of the substantive reasons why Talmon would have difficulty winning a grievance for additional credited service between 1980 and 1985.

On March 23, 2005, the Central States Trustees met and declined to award Talmon additional credited service from 1980 to 1985. The Trustees noted than any claim ICX violated the terms of its collective bargaining agreement ("CBA") by laying off Talmon and refusing to transfer him in 1980 should have been brought in another forum, since Central States is not the proper forum to adjudicate a dispute over ICX's CBA. However, the Trustees did determine that Talmon was entitled to several additional months of credited

service in July and August 1969. The Trustees noted that even if it awarded Talmon credited service for all the time periods in dispute, it would still not add up to thirty years, and thus would not change the determination that he was ineligible for a Partial Pension.

Talmon subsequently appealed to this court.

II. STANDARD OF LAW

A. Motion to Dismiss

Rule 12(b)(6) of the Federal Rules of Civil Procedure allows the court to determine the legal sufficiency of a plaintiff's claims. *See Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993). Courts reviewing a 12(b)(6) motion must accept the well-pled factual allegations of the complaint as true and construe all reasonable inferences in favor of the plaintiff. *See Miller v. Currie*, 50 F.3d 373, 377 (6th Cir. 1995). However, the court is not required to accept conclusions of law or unwarranted inferences of fact cast in the form of factual allegations. *Blackburn v. Fisk University*, 443 F.2d 121, 123 (6th Cir. 1971). Accordingly, a court must determine "whether the plaintiff undoubtedly can prove no set of facts in support of [his] claim that would entitle [him] to relief" under a viable legal theory advanced in the complaint. *Columbia Natural Resources, Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995), *cert. denied*, 116 S. Ct. 1041 (1996).

B. Motion for Judgment on the Administrative Record

Traditional summary judgment rules do not cleanly apply to ERISA benefit cases, where the district court is engaged in a review of the administrative record. *Wilkins v. Baptist Healthcare System, Inc.*, 150 F.3d 609, 619 (6th Cir. 1998)

(Gilman and Ryan, concurring). Where a district court is reviewing an ERISA decision in a case where the administrator has "discretionary authority to determine eligibility for benefits or to construe the terms of the plan," the court applies the arbitrary and capricious standard of review to the ERISA administrator's decision. *E.g., Darland v. Fortis Benefits Ins. Co.*, 317 F.3d 516, 527 (6th Cir. 2003). However, where the ERISA administrator does not have discretionary authority, the district court reviews the decision *de novo*. *E.g., Wilkins*, 150 F.3d at 613.

Talmon contends, without any factual or legal basis, that the *de novo* standard of review should apply. However, the Central States Pension Fund Trust Agreement expressly gives discretionary authority to the Trustees:

> The Trustees are vested with discretionary and final authority in making all such decisions, including Trustee decisions upon claims for benefits by participants and beneficiaries of the Pension Fund and other claimants . . .

(Trust Agreement, Art. V, § 2, ECF No. 12, Exh. A.) Therefore, under the well-established law of this Circuit, the court reviews the Trustee's decision under the arbitrary and capricious standard of review.

The arbitrary and capricious standard is "the least demanding form of judicial review of administrative action," and "[w]hen it is possible to offer a reasoned explanation, based on the evidence, for a particular outcome, that outcome is not arbitrary or capricious." *Davis v. Kentucky Finance Cos. Retirement Plan*, 887 F.2d 689, 693 (6th Cir. 1989) (quoting *Pokratz v. Jones Dairy Farm*, 771 F.2d 206, 209 (7th Cir. 1985)). Under the arbitrary and capricious standard,

the Trustee's decision must be upheld if rational in light of the plan's provisions or if "based on a reasonable interpretation of the plan." *Shelby County Health Care Corp. v. S. Council of Indus. Workers Health & Welfare Trust Fund*, 203 F.3d 926, 933 (6th Cir. 2000). Moreover, the district court "must accept a plan administrator's rational interpretation of a plan even in the face of an equally rational interpretation offered by the participants." *Morgan v. SKF USA, Inc.*, 385 F.3d 989, 992 (6th Cir. 2004).

III. LAW AND ANALYSIS

A. Breach of Fiduciary Duty

Central States makes several arguments as to why Talmon's breach of fiduciary duty claim under ERISA should be dismissed. First, Central States contends in its motion to dismiss that an ERISA breach of fiduciary duty claim for individual relief is not allowed when a plan participant also files a claim for ERISA benefits. Second, Central States asserts that a breach of fiduciary duty claim is barred by the applicable statute of limitations. For the reasons stated below, the court finds both arguments well-taken, and grants Defendant's motion to dismiss the breach of fiduciary duty claim.

1. Permissibility of ERISA § 502(a)(2) Claims along with 502(a) Claims

Section 502, the ERISA civil enforcement statute (29 U.S.C. § 1132) outlines the permissible ERISA claims which a participant may pursue in court. Participants may sue for individual benefits due under the terms of an ERISA plan under § 502(a)(1)(B). Participants may sue for a breach of fiduciary duty under both § 502(a)(2) and § 502(a)(3).

However, the ERISA statute and subsequent court interpretations have placed specific limits on suits for breach of a fiduciary duty.

For a suit under § 502(a)(2), 29 U.S.C. § 1132(a)(2), no individual relief or damages are available. Rather, any available relief under this section "inure[s] to the benefit of the plan, not an individual participant." *Whisman v. Robbins*, 55 F.3d 1140, 1149 (6th Cir. 1995). In the instant case, Talmon is not suing on behalf of the plan; he seeks recovery for his individual injury and damages. (Pl. Complt. ¶ 15, ECF No. 1.) Therefore, the claim must be dismissed. *E.g.*, *Adcox v. Teledyne*, 21 F.3d 1381 (upholding dismissal of ERISA fiduciary duty claim "because a cause of action under § 1132(a)(2) permits recovery to inure only to the ERISA plan, not to individual beneficiaries.")

Pursuant to the "catch-all" provision in § 502(a)(3), 29 U.S.C. § 1132(a)(3), a participant or beneficiary may bring an action for breach of fiduciary duty:

> (A) To enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of the subchapter or the terms of the plan.

29 U.S.C. § 1132(a)(3). In *Varity Corp v. Howe*, 516 U.S. 489, 512 (1996), the Supreme Court limited relief available under § 502(a)(3) to participants or beneficiaries who are not able to avail themselves of § 502's other remedies. The Sixth Circuit has applied *Varity* by precluding beneficiaries from bringing breach of fiduciary duty or other equitable claims under § 502(a)(3) when the claimant is simultaneously bringing a cause of action under § 502(a)(1)(B). *Marks v.*

Newcourt Credit Group, Inc., 342 F.3d 444, 454 (6th Cir. 2003); *Wilkins*, 150 F.3d at 615. In *Wilkins*, the court held that because § 502(a)(1)(B) provided a remedy for the plaintiff's alleged injuries that allowed him to bring a lawsuit to challenge the Plan Administrator's denial of benefits, the plaintiff did not have a right to a cause of action for breach of fiduciary duty pursuant to § 502(a)(3). In *Marks*, the plaintiff filed suit for denial of ERISA benefits under § 502(a)(1)(B) and for breach of fiduciary duty under § 502(a)(3). The Sixth Circuit affirmed the district court's dismissal of § 502(a)(3) breach of fiduciary duty claim, holding that "a participant cannot seek equitable relief for a breach of fiduciary duty under the catchall provision of § 502(a)(3) if the alleged violations are adequately remedied under other provisions of § 502." 342 F.3d at 454.

In this case, Talmon does not explicitly cite § 502(a)(1)(B) in his complaint. However, his second claim is for "lack of compliance with benefit plans." (Pl. Complt. Claim 2, ECF No. 1.) He seeks a higher pension benefit than Central States agrees he is entitled to. This is precisely the type of claim permitted by § 502(a)(1)(B), which allows an action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Since Talmon is entitled to seek relief under § 502(a)(1)(B), he may not also seek relief for breach of fiduciary duty under § 502(a)(3). For these reasons, Defendant's Motion to Dismiss the breach of fiduciary duty claim is granted.

2. *Statute of Limitations*

Additionally, Plaintiff's claim is barred by the ERISA statute of limitations. The ERISA statute states:

> No action may be commenced under this title with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part [29 USCS §§ 1101 et seq.], or with respect to a violation of this part [29 USCS §§ 1101 et seq.], after the earlier of–
>
> > (1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or
> >
> > (2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation;

29 U.S.C. § 1113. In the instant case, it is undisputed that Talmon first learned that Central States had calculated his credited service at 10.75 years in 1981. Thus, any breach of fiduciary duty claim arising from Central States' refusal to credit additional service time post-1980 or pre-1969 had a statute of limitations which expired in 1984. Any breach of fiduciary duty claim arising from Central States' interpretation of its ERISA plan documents expired in 1996, three years after Central States' 1993 rejection of Talmon's application for a Partial Pension.

Plaintiff argues, in conclusory fashion and without any factual or legal support, that the statute of limitations began to accrue when the appeal was denied in 2005. For the reasons stated above, this argument is without merit. The motion to dismiss is granted on the alternative grounds that the statute of limitations has expired.

B. Denial of Benefits

While it is not entirely clear from the briefing, Talmon appears to raise three specific challenges to the administrative decision: (1) he is entitled to additional credited service prior to 1969; (2) he is entitled to additional credited service after his 1980 termination; and (3) he is entitled to a Partial Pension under the terms of the Central States pension. The administrative decision of the Central States Pension Fund Trustees was not arbitrary and capricious on any of these issues.

1. Pre-1969 Credit

Talmon argues that he is entitled to an additional 4.33 years of credited service for pension contributions to the Local 293 pension fund between 1963 and 1969. The Central States Trustees concluded that since Local 293 independently concluded that Talmon had lost the credit because of a break in service, Central States had no authority to credit this service to Talmon's pension. Talmon has pointed to no provision in the Central States Pension Plan which gives Central States authority to credit service that another pension plan asserts was forfeited. Moreover, documents in the administrative record verify Local 293's position that Talmon forfeited his pre-1969 pension credit. Central States' conclusion that this is an issue Talmon should have taken up with Local 293 is not arbitrary and capricious, and is supported by the plan documents and the administrative record. Defendant's Motion for Judgment on the Administrative Record is granted as to this issue.

2. Post-1980 Credit

Talmon argues that he is entitled to additional credited service for the time that he did not work, but should have been working, for ICX after 1980. The Central States Trustees concluded Talmon was not entitled to additional credited service time because Talmon did not work after 1980, ICX did not pay pension contributions on his behalf after 1980, and any violation of ICX's CBA should have been raised with ICX. While Talmon cites affidavits which he asserts establish his seniority rights and his entitlement to a job with ICX after his 1980 termination, such evidence is irrelevant. The ICX CBA is not before the court now, and was not before the Trustees when they made their decision. If Talmon felt he should have been employed after 1980 under the terms of the CBA, he could have filed a grievance and litigated that issue. However, Talmon cites no order of reinstatement, no plan document, and no legal authority for the proposition that Central States should credit his pension for time he never worked, with money that was never paid to the pension. Under the terms of its pension plan, Central States is not required to credit contributions unless someone actually makes the contributions on behalf of an employee. There is no factual dispute that ICX never made contributions on behalf of Talmon after 1980. Accordingly, Central States' conclusion on this issue is fully supported by the administrative record, and is not arbitrary and capricious. Defendant's Motion for Judgment on the Administrative Record is granted as to this issue.

3. Partial Pension Availability

Talmon contends that he should be awarded a Partial Pension of $2,500 per month. The Central States Trustees noted that even if Talmon were awarded full credit for all of

the years in dispute, he still would not have sufficient credited service under the pension plan's terms to receive a Partial Pension. As with the other issues discussed above, Talmon has failed to make any factual or legal argument calling into question the Trustees' decision. Talmon points to no portion of the Central States Pension Plan which suggests that the Trustees' interpretation is incorrect, and does not propose any alternative interpretation. The Central States Pension Plan unambiguously requires 30 years of credited service for a Partial Pension when the participant retires before age 50. It is undisputed that Talmon was 44 when he stopped working, and would not reach 30 years of credited service even if he was given credit for the years disputed in this litigation. Thus, Central States' decision on this issue is fully supported by the administrative record, and is not arbitrary and capricious. Defendant's Motion for Judgment on the Administrative Record is granted as to this issue.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss Count One (ECF No. 7) is granted, and Defendant's Motion for Judgment on the Administrative Record as to all claims (ECF No. 9) is also granted. Inasmuch as the court has dismissed all of Plaintiff's remaining claims, Defendant's Motion to Strike Plaintiff's jury demand and claim for punitive damages is denied as moot.

IT IS SO ORDERED.

/S/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

January 6, 2006

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No.: 1:05 CV 1330

[Filed January 6, 2006]

KENNETH TALMON,
Plaintiff

v.

CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, *et al.*,
Defendants

JUDGE SOLOMON OLIVER, JR.

JUDGMENT ENTRY

The court, having granted Defendant's Motion to Dismiss Count One of Plaintiff's Complaint (ECF No. 7) and its Motion for Judgment on the Administrative Record as to all claims (ECF No. 9) in a separate order of this same date, hereby enters judgment for the Defendant and against the Plaintiff.

IT IS SO ORDERED.

/S/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

January 6, 2006

APPENDIX D

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT
(2007)

29 U.S.C. § 1132. Civil enforcement

(a) Persons empowered to bring a civil action. A civil action may be brought--

(1) by a participant or beneficiary--

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409 [29 USCS § 1109];

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c) [29 USCS § 1025(c)];

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title;

(6) by the Secretary to collect any civil penalty under paragraph (2), (4), (5), (6), or (7) of subsection (c) or under subsection (i) or (l);

(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 609(a)(2)(A) [29 USCS § 1169(a)(2)(A)]);

(8) by the Secretary, or by an employer or other person referred to in section 101(f)(1) [29 USCS § 1021(f)(1)], (A) to enjoin any act or practice which violates subsection (f) of section 101 [29 USCS § 1021(f)], or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection; or

(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan constitutes a violation of part 4 of this title [subtitle] or the terms of the plan, by the Secretary, by any individual who was a participant or beneficiary at the time of the alleged violation, or by a fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts.

* * *